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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 20, 2000

APPLICATION OF

OLD DOMINION ELECTRIC COOPERATIVE
d/b/a COOPERATIVE ENERGY

CASE NO. PUE000345

For a license to conduct
business as a competitive
service provider in electric
retail access pilot programs

ORDER GRANTING MOTION

On August 14, 2000, the Staff of the State Corporation Commission ("Staff") filed a Motion requesting the State Corporation Commission ("Commission") to rule whether Old Dominion Electric Cooperative d/b/a Cooperative Energy ("ODEC" or "the Company") must form an affiliate or subsidiary to obtain a license to conduct business as a competitive service provider in electric retail access pilot programs. On August 18, 2000, ODEC filed its Response to Staff Motion. On September 1, 2000, the Staff filed its Reply. On September 7, 2000, the Commission heard oral argument concerning this issue.

NOW UPON CONSIDERATION of the aforementioned pleadings and oral argument, we are of the opinion and find that ODEC is required by § 56-587 D of the Code of Virginia to form an affiliate or subsidiary if it desires to conduct business as a

competitive service provider in electric retail access pilot programs. Our decision is not based upon potential harm to the competitive market but rather upon a plain language reading of the applicable law.

Section 56-587 D of the Code of Virginia reads:

Notwithstanding the provisions of § 13.1-620, a public service company may, through an affiliate or subsidiary, conduct one or more of the following businesses, even if such business is not related to or incidental to its stated business as a public service company: (i) become licensed as a retail electric energy supplier pursuant to this section, or for purposes of participation in an approved pilot program encompassing retail customer choice of electric energy suppliers;. . .

ODEC argued that this section applies only to a public service company that otherwise would not be able to participate as a retail electric energy supplier because such supply is not related to or incidental to that public service company's stated business. However, we find that this section, as written, requires all public service companies to form affiliates or subsidiaries before becoming licensed as retail electric energy suppliers. Specifically, the words "even if" denote that all public service companies must form such affiliates or subsidiaries, regardless of the relationship between a public service company's stated business and the retail electric energy supply business. This language simply clarifies that a public

service company has the option of conducting business as a retail electric energy supplier under § 56-587 or participating in an approved electric retail access pilot program "even if such business is not related to or incidental to its stated business as a public service company." Clearly, the phrase "through an affiliate or subsidiary" modifies the phrase "may . . . conduct one or more of the following businesses," and thus limits the ways that public service companies may pursue the activities permitted under this statute. While the provision could have been more specific, a plain reading of this statute compels us to conclude that ODEC, as a public service company seeking to enter the competitive retail market, must form an affiliate or subsidiary to do so. We emphasize that our decision is based on the plain meaning of the statute. If another result was intended by the General Assembly, that intention is not manifest in the statute.

There was also some limited discussion concerning the applicability of the Utility Aggregation Cooperatives Act, §§ 56-231.38 to -231.52 of the Code of Virginia, to ODEC's licensure as a competitive service provider. Specifically, ODEC asserted that, pursuant to § 56-231.51, if a conflict arises between the Utility Aggregation Cooperatives Act and any other provision of law, the latter would not apply to an aggregation cooperative.

Section 56-587 D does not conflict with the Utility Aggregation Cooperatives Act and does not prohibit ODEC from participating as a retail electric energy supplier or as a competitive service provider in a pilot program.¹ Rather, § 56-587 D simply establishes the manner in which such participation must occur. The language of this section clearly states that a public service company, such as ODEC, "may, through an affiliate or subsidiary, . . . (i) become licensed as a retail electric energy supplier pursuant to this section, or for purposes of participation in an approved pilot program" Clearly, ODEC may become licensed to participate in electric retail access pilot programs; it simply must do so through an affiliate or subsidiary. Moreover, the Utility Aggregation Cooperatives Act itself envisions the formation of an affiliate or subsidiary to perform various activities.²

For these reasons we find that § 56-587 D requires that ODEC form an affiliate or subsidiary to participate in retail access pilot programs. Upon formation of such an entity, ODEC

¹ Because we have determined that there is no conflict between § 56-587 D and the Utility Aggregation Cooperatives Act, we need not decide certain issues surrounding the Act, including ODEC's status as an aggregation cooperative, whether ODEC engages in "regulated utility service" pursuant to § 56-231.50:1, and whether participation as a competitive service provider in retail access pilot programs is an "unregulated business activity" as that term is used in the Utility Aggregation Cooperatives Act.

² See §§ 56-231.39 and -231.50:1.

should amend its current application to reflect the information relevant to the affiliate or subsidiary.

Accordingly, IT IS ORDERED THAT:

(1) ODEC must form an affiliate or subsidiary if it desires to participate as a competitive service provider in electric retail access pilot programs.

(2) Upon formation of such affiliate or subsidiary to obtain a license as a competitive service provider, ODEC shall amend its current licensure application to reflect, pursuant to 20 VAC 5-311-50, all necessary information for this affiliate or subsidiary that differs from the information provided in ODEC's application previously filed.

(3) No additional public notice of the application, as amended, shall be required; however, ODEC shall, by direct mail, send a copy of this order to each of its member cooperatives. Proof of such mailing shall be filed within seven (7) days of the date of this Order.

(4) The Commission Staff shall analyze the reasonableness of the application if amended and shall present its findings in a supplemental Staff report to be filed within ten (10) days of the filing of the information noted in paragraph (2) above.

(5) Within five (5) days of the filing of the Staff report, ODEC and/or its affiliate or subsidiary may file with

the Clerk of the Commission an original and fifteen (15) copies of any response it may have to the Staff report.

(6) This matter is continued generally.